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May 23, 2019

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex parte presentation in WC Docket No. 18-155

Dear Ms. Dortch:

Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”) is making this filing in order to address recent ex parte presentations filed by other parties in this rulemaking proceeding.¹

I. Users of Access Stimulating Services Should Bear the Access Costs of Completing Their Calls.

The Commission has “a duty to consider responsible alternatives to its chosen policy” that are “significant,” “obvious,” and “viable.” *City of Brookings Municipal Tel. Co. v. FCC*, 822 F.2d 1153, 1169-70 (D.C. Cir. 1987). To prevent wasteful arbitrage, Aureon previously recommended that the Commission adopt a new rule directly prohibiting wasteful arbitrage.² However, if the Commission determines that such a direct prohibition would be difficult to enforce, the Commission should, as an alternative, correct the false “free” price signals received by users of access stimulating services, which will allow free market forces to stop wasteful arbitrage without new regulations.

The Commission should take steps to ensure that access stimulating service users receive the correct price signals reflecting the true economic costs of transporting their calls to conference bridges or other access stimulating services. As the Commission has recognized, a policy that “ensures that the customer who chooses a network pays the network for the services the subscriber

¹ *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, Notice of Proposed Rulemaking, WC Docket No. 18-155, FCC 18-68, 83 Fed. Reg. 30628-01 (rel. June 5, 2018) (“NPRM”).

² Comments of Iowa Network Services, Inc. d/b/a Aureon Network Services at 8, WC Docket No. 18-155 (July 19, 2018).

receives...brings market discipline to intercarrier compensation.³ T-Mobile's One-Cent Policy, described *infra.*, demonstrates that an interexchange carrier ("IXC") or wireless carrier does not need to pass on all access costs in order to stop wasteful arbitrage. The record indicates that allowing IXCs and wireless carriers to pass on only one cent per minute of access costs to the access stimulating service user will achieve the Commission's objective by narrowing the price imbalance with the free (zero) end user price exploited by arbitrageurs.

The evidence shows that arbitrage traffic declines significantly when the end user is charged something more than zero to place access stimulating calls. After T-Mobile charged just one cent per minute to customers that chose to place calls to the access stimulating services operated by HD Tandem/Free Conferencing, the volume of arbitrage traffic decreased significantly. As Free Conferencing admits:

"As soon as the One-Cent Policy went into effect, close to 70% of the traffic from T-Mobile customers disappeared in the first month...Today, the number of calls (and minutes of use) to Free Conferencing conferences by T-Mobile users is about 50% less than prior to the One-Cent Policy....Free Conferencing has approximately 36% less T-Mobile users that call its services as compared to 2016 before the One-Cent Policy....The growth expectation for 2016 was stifled by the One-Cent Policy and carried over to 2017 and 2018 with a continued decline in minutes and users."⁴

These factual admissions provide actual proof that wasteful arbitrage has been successfully reduced for more than two years by passing on just a fraction of the access costs to the user of the access stimulating service.

Free market forces will cause the cessation of wasteful calls, which burden our nation with costs that exceed their benefits, so long as IXCs and wireless carriers pass onto the end user placing a call to an access stimulating service, at least some of the access costs required to complete that call. The potential user of the access stimulating service is the only party in the call path with full control over the decision to utilize an access stimulating service, such as placing a conference call. The potential user of an access stimulating service is also in the best position to determine whether the arbitrage is wasteful (i.e. whether the access costs incurred to complete the call exceed the benefits of using the access stimulating service).

If IXCs and wireless carriers provide an introductory message telling the end user that there will be a charge for the call, the end user will be able to weigh the costs and benefits before placing the call and prior to incurring the costs for the call. T-Mobile's One-Cent Policy, which includes such a recording, demonstrates that many customers perceive an arbitrage activity to be wasteful and do not place the call if they will have to pay one cent per minute to use the access stimulating service. So long as the benefit and value of an access stimulating service to an IXC's customer is less than the price reflecting access costs to complete the call, the customer will not make the call,

³ *Connect America Fund*, 26 FCC Rcd. 17663, 17905 ¶ 742 (2011).

⁴ Petition to Deny of CarrierX, LLC at 16-17, *In the Matter of Applications of T-Mobile US, Inc. and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 18-197 (Aug. 27, 2018).

avoiding wasteful usage of the nation's telecommunications infrastructure and the associated costs to the public.

Aureon's proposal will also help achieve the Commission's goal of eliminating implicit subsidies through free market forces rather than new regulation. The Commission previously indicated that "we prefer to rely on the market rather than regulation to identify implicit support because we are more confident of the market's ability to do so accurately."⁵ An IXC's customers that never use an access stimulating service currently subsidize the access costs incurred for a small subset of customers to use an access stimulating service. This implicit subsidy is eliminated when IXCs pass on the access costs to the user of the access stimulating service. Furthermore, the removal of this implicit subsidy enables an IXC to pass along the savings and reduce the long distance rates paid by customers that do not use access stimulating services.

For several reasons, the requirement to geographic average rates for telecommunications services in 47 U.S.C. § 254(g) does not preclude charging a price to the access stimulating service caller that recovers the access costs of completing the call to the access stimulating service. First, the Commission has held that section 254(g) does not apply to charges for "exchange access whether paid by the carrier or the end user."⁶ Section 254(g) applies to only interexchange service, not exchange access service. Under Aureon's proposal to combat wasteful arbitrage, the end user pass-through charge would be for exchange access service, not interexchange service.

Second, because the costs of exchange access are a local exchange carrier's ("LEC's") costs, not an IXC's costs, the Commission has also determined that section 254(g) does not prevent an IXC from passing onto end users the costs of exchange access service.⁷ "These costs are, in fact, LEC costs, regardless whether they are recovered directly from end users or recovered indirectly through IXC payments that are then passed onto end users."⁸ Therefore, section 254(g) allows the Commission to stop wasteful arbitrage by making it clear that IXCs can send accurate price signals by passing on the access costs incurred by Aureon and LECs to the subset of the IXC's customers that cause calls to be placed to access stimulating services.

Third, section 254(g) applies only to "telecommunications services." A service is not a "telecommunications service" unless it provides "telecommunications" on a common carrier basis.⁹ Major arbitrageurs, such as HD Tandem and its audio bridging service partners, do not provide telecommunications on a common carriage basis. Instead, those arbitrageurs provide telecommunications on a private carriage basis because they enter into individually negotiated

⁵ *In the Matter of Access Charge Reform*, 12 FCC Rcd. 15982, 15987 ¶ 9 (1997).

⁶ *In the Matter of Access Charge Reform*, 15 FCC Rcd. 12962, 13010 ¶ 119 (2000).

⁷ *Id.* ¶ 120.

⁸ *Id.*

⁹ *Request for Review by InterCall, Inc. of Decision of Universal Service Administrator*, 23 FCC Rcd 10731, 10735-10736 ¶¶ 13, 18 (2008), *recon. denied*, 27 FCC Rcd 898 (2012), *petition for review dismissed in part and denied in part sub nom. Conference Group, LLC v. FCC*, 720 F.3d 957 (D.C. Cir. 2013).

contracts with their customers. Therefore, an IXC can pass access costs onto the user of a non-common carrier audio bridge service without violating Section 254(g).

Aureon's proposal to present accurate price signals to users of access stimulating services is the only proposal by any party backed by actual evidence that it will work to reduce wasteful arbitrage. AT&T recently admitted that:

"The only effective solution is to require...the users of the access stimulating services to bear the costs of providing those services, including the transport costs associated with such calls. To the extent that responsibility for those costs are properly assigned, the incentives to manipulate the routing of the traffic will be eliminated, and calls will be provided in an efficient and cost effective way."¹⁰

The proposals submitted by other parties depend upon sheer speculation that they may achieve the Commission's objective. Furthermore, most of those proposals will further distort free market forces and increase the opportunities for wasteful arbitrage. Therefore, the Commission should reject those proposals as speculative, unviable, and contrary to the public interest.

II. New Regulations Proposed by Other Parties Will Increase Opportunities for Wasteful Arbitrage.

Aureon is one of the few parties to this proceeding that cannot benefit from arbitrage, whether by increasing traffic volume or increasing transport mileage.¹¹ Aureon's cost-based centralized equal access ("CEA") tariff rate decreases as traffic volume increases. Furthermore, because the tariff rate for CEA service does not vary with mileage, Aureon receives the same compensation from IXCs whether a call is transported 1 mile or 100 miles.¹² Consequently, as one of the few parties whose compensation is limited to a cost-based (non-distance-sensitive) revenue requirement, Aureon can provide the Commission with an objective, unbiased assessment that is not available from most other parties to this proceeding.

¹⁰ Letter from Matthew Nodine at 34, Assist. V.P., AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (Apr. 9, 2019) ("AT&T ex parte letter").

¹¹ As Aureon does not engage in access stimulation and cannot benefit from access stimulation, the Commission should reject proposed definitions of access stimulation that are so over-inclusive that they could deem Aureon to be engaged in access stimulation. *See e.g.*, Letter from Matthew DelNero at 20, counsel for Inteliquent, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (May 14, 2019) ("Inteliquent ex parte letter"). Adoption of Aureon's proposal which would allow IXCs and wireless carriers to pass access costs onto the user of an access stimulating service, avoids the need for the Commission to address revisions to the definition of access stimulation, particularly when such a revised definition will not stop wasteful arbitrage.

¹² With respect to mileage limitations proposed by some parties, it would be irrational to subject Aureon's CEA service to an arbitrary mileage limitation when Aureon's non-distance-sensitive transport rate renders it impossible for Aureon to engage in mileage pumping. *See, e.g.*, Inteliquent ex parte letter at 10. Furthermore, the benefits of rural traffic concentration and long distance competition depend upon the transport of calls on average more than 100 miles to enable smaller IXCs to connect with the CEA network at only a single point of interconnection.

Proposals by IXC's aimed at eliminating intercarrier compensation, rather than eliminating wasteful arbitrage, are misconceived.¹³ Changing intercarrier compensation is not in itself the objective of the NPRM. The stated goal for this proceeding is "to stop economically wasteful arbitrage activity and the damage it causes to telecommunications markets."¹⁴ The objective of this proceeding is indicated by its title: "to eliminate access arbitrage." However, proposals that would require Aureon to provide CEA service to IXC's for free or foster the use of direct connects to engage in arbitrage will not achieve the NPRM's objective. Such proposals will instead increase the opportunities for wasteful arbitrage and force Aureon to shut down the CEA network.

In contrast to Aureon, IXC's are incentivized to increase arbitrage traffic volume if the Commission relieves them from any obligation to pay for the switched access facilities they use to complete their long distance calls. With CenturyLink's control over a majority of the transit facilities and direct connects in rural Iowa, CenturyLink is attempting to persuade the Commission to support an increase in the use of those direct connects for wasteful arbitrage traffic.¹⁵ Furthermore, access stimulators, such as HD Tandem, currently use direct connects and untariffed prices for arbitrage and want the Commission to require greater use of direct connects at detariffed prices to escalate such arbitrage.¹⁶

None of these proposals address the problems caused by the shifting by IXC's of arbitrage traffic instantaneously back and forth between the CEA network, direct connects, and other networks. In order to prevent call blocking, Aureon must engineer the CEA network to carry the largest volume of traffic that it can expect to receive from IXC's. As the Commission recognized, it is difficult to forecast demand that "is subject to significant upturns and downturns over time."¹⁷ Once Aureon establishes sufficient capacity to carry the current traffic volume, the investment in those new facilities can become quickly stranded because IXC's shift traffic away at a moment's notice. As IXC's suddenly and erratically shift large volumes of traffic from one network to another, they wreak havoc on efficient network design and expose consumers to rural call completion problems.

Aureon's proposal will eliminate the IXC's' incentive to shift large volumes of traffic back and forth between networks. Because IXC's will, under Aureon's proposal, recover access costs from the end user, IXC's will have an incentive to route traffic over the most reliable network rather than multiple inferior networks. No longer will call quality be sacrificed by least call routing schemes. For consumers, Aureon's proposal will ensure higher quality, well-engineered communications services with less risk of call blocking due to traffic shifting.

¹³ See e.g., Letter from Keith C. Buell, Senior Counsel, Sprint, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (May 16, 2019) (proposing the elimination of all access rate elements for CEA service); AT&T ex parte letter; Letter from Joseph C. Cavender, V.P. and Assist. G.C., CenturyLink, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (Apr. 30, 2019) ("CenturyLink ex parte letter").

¹⁴ NPRM ¶ 36.

¹⁵ CenturyLink ex parte letter at 3.

¹⁶ Letter from David Erickson, President, HD Tandem, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (Apr. 8, 2019) ("HD Tandem ex parte letter").

¹⁷ *In the Matter of Iowa Network Access Division Tariff* F.C.C. No. 1, 33 FCC Rcd. 7517, 7561 § 110 (2018).

The Commission's primary mission is "to make available communications service with adequate facilities at reasonable charges. 47 U.S.C. § 151. In evaluating solutions to wasteful arbitrage, the Commission should avoid harm to rural consumers and prevent the serious damage to the rural telecommunications market that would result from some of the proposals filed by other parties. Proposals that would significantly reduce the non-distance-sensitive, cost-based compensation that Aureon receives from IXC's will force Aureon to discontinue the provision of CEA service. CEA service does not receive any universal service fund support or any other subsidies. CEA service also does not have end users that Aureon could bill to recover the costs of CEA service if Aureon is precluded from recovering those costs from IXC's. Furthermore, allowing direct connects to remove most of the traffic from the CEA network would render the CEA network financially unviable. The Commission should not adopt new rules that would harm the public and result in such a "plainly inferior" outcome. *Pub. Citizen, Inc. v. Mineta*, 340 F. 3d 39, 56 (2d Cir. 2003) (holding that such regulation is arbitrary and capricious).

By constructing thousands of miles of fiber optic cable in rural areas and aggregating rural traffic from 200 LECs at a central access tandem, the CEA network has made it economical for AT&T's smaller IXC competitors to provide service to rural Iowa. Furthermore, by centralizing expensive features and functionalities, the CEA network has made advanced broadband services affordable and available in small towns and rural areas. Absent Aureon's network, 300,000 rural customers would struggle to receive the same modern service offerings and technologies available in urban areas. 180,000 customers would suffer the complete loss of long distance/toll calling service, and an additional 120,000 would also be negatively impacted by the loss of the CEA network. Approximately 460 out of 600 rural communities would be completely isolated from the rest of the nation because without CEA service, no IXC's would be able to reach those communities even through CenturyLink's network. Another 140 communities in Iowa similarly would be isolated from the national public switched telephone network, and residents living in those areas would only be able to place local calls to other nearby communities through extended area service arrangements. The harm to the public interest would be devastating, should the Commission adopt new rules in this proceeding that cause the demise of Aureon's CEA network,

Specifically, the proposed rule that would require terminating LECs, rather than IXC's, to pay for CEA service (a/k/a prong 1) will not achieve the Commission's objective to stop wasteful arbitrage, but will inflict serious harm on rural consumers. Experience has failed to show a clear relationship between intercarrier compensation and eliminating access arbitrage. As acknowledged in the NPRM, the Commission's predictive judgment that changes to intercarrier compensation would reduce wasteful arbitrage did not come true.¹⁸ After the Commission adopted 47 C.F.R. § 51.909(j), phasing down to zero, the terminating end office local switching rate, HD Tandem established direct connect facilities in order to arbitrage transport rates.¹⁹ "[W]here the

¹⁸ NPRM ¶ 1 ("Despite the Commission's adoption of a national, default bill-and-keep framework as the ultimate end state for the exchange of telecommunications traffic and its efforts to reduce wasteful arbitrage, a variety of arbitrage schemes continue to evolve and once again flourish").

¹⁹ *Id.* ¶ 2 ("To circumvent the Commission's rules, access-stimulating LECs have adjusted their practices, and now they support such services by interposing intermediate providers of switched access service not subject to the Commission's existing access stimulation rules in the call route").

factual assumptions which support an agency rule are no longer valid, agencies ordinarily must reexamine their approach.” *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 767 (6th Cir. 1995).

The lack of any impact on arbitrage traffic despite a substantial decrease in Aureon’s CEA tariff rate is further evidence that changes to intercarrier compensation will not cause any reduction in wasteful arbitrage. In June 2013, Aureon’s per minute-of-use (“MOU”) CEA rate was \$0.00896. Aureon reduced its CEA rate significantly to \$0.00576 per MOU on February 22, 2018, and yet again to the very low cost-based rate of \$0.00296 on September 24, 2018.²⁰ Although Aureon has dramatically reduced its CEA tariff rate since 2018, traffic has not moved from HD Tandem’s arbitrage network to the CEA network. Instead, there have been enormous declines in CEA traffic volume as the arbitrage traffic on HD Tandem’s network has increased. HD Tandem admits that its transport arbitrage network now routes “more than 80 percent of all” access stimulation traffic.²¹ Consequently, AT&T has concluded that reducing Aureon’s CEA tariff rate even further will not reduce wasteful arbitrage.²²

Having articulated that the Commission’s goal is to “eliminate access arbitrage,” it would be arbitrary and capricious for the Commission to select an option, prong 1, that will produce more arbitrage. *Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702, 707 (D.C. Cir. 1985) (reasoned decision-making dictates that the FCC not “employ means that actually undercut its own purported goals”). Despite its extensive participation in this proceeding, HD Tandem/Free Conferencing has never indicated that it will cease its arbitrage schemes if a LEC, rather than an IXC, must pay for exchange access service. Rather, there is every indication that AT&T and HD Tandem have concrete plans to increase arbitrage on a large scale should the FCC adopt prong 1 and exempt AT&T from paying for exchange access service. Having signed a contract with HD Tandem less than a year ago, AT&T is now poised to begin routing large volumes of arbitrage traffic to HD Tandem if the Commission adopts new rules making it profitable for AT&T to engage in such arbitrage.²³ While AT&T claims that it has not yet begun routing traffic over HD Tandem’s transport arbitrage network, it is reasonable to conclude that AT&T would not have gone to the effort to negotiate and sign such a contract unless AT&T intended to help escalate HD Tandem/Free Conferencing’s arbitrage in the very near future.

There is nothing in prong 1 that prevents HD Tandem/Free Conferencing from continuing to increase arbitrage. HD Tandem/Free Conferencing can connect a conference bridge in a rural

²⁰ Detariffing CEA service, as suggested by some parties, would also not stop wasteful arbitrage. See e.g., AT&T ex parte letter at 13. Moreover, tariffing CEA service is critical to promoting competition among long distance services in rural Iowa because without such tariffs, AT&T likely would leverage its control over the majority of traffic on the CEA network and rapidly reinstate its former monopoly power over interLATA long distance service in rural areas. If the Commission were to require Aureon to negotiate individual non-tariffed rates for CEA service, different rates would be charged depending upon the IXC’s market power, resulting in rate discrimination that would force smaller IXCs to stop competing with AT&T in rural Iowa. See Iowa Network Services, Inc.’s Motion for Partial Summary Denial of AT&T Services, Inc.’s Forbearance Petition, WC Docket No. 16-363 (Dec. 2, 2016).

²¹ HD Tandem ex parte letter at 2.

²² AT&T ex parte letter at 31.

²³ Letter from David Erickson, President, HD Tandem, to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (Apr. 17, 2019); Letter from Matthew Nodine, Assist. V.P., AT&T Services, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 18-155 (May 1, 2019).

LEC's exchange without sharing revenue with that terminating LEC or having any other form of agreement with the rural LEC. Given the Commission's policy against blocking traffic, a rural LEC would risk significant liability if it refused to connect a Free Conferencing conference bridge to the local network.

Under prong 1, HD Tandem/Free Conferencing would be permitted to bill the terminating LEC for transporting the arbitrage traffic to its conference bridge in the LEC's exchange, even though the LEC is not involved in access stimulation. Furthermore, the rural LEC would pay for exchange access service but receive none of the revenue from long distance service that IXC's collect from callers to the access stimulating services. In order to pay access rates to HD Tandem/Free Conferencing that IXC's like AT&T pay today, LECs would be forced to increase their local end user rates billed to rural consumers located in their exchanges. Such an outcome violates 47 U.S.C. § 254(b)(3), which requires rates in rural areas to be "reasonably comparable" to those in urban areas. Prong 1 would not only fail to stop wasteful arbitrage, but would inflict serious damage upon rural ratepayers, rural telecommunications, and the rural economy in violation of the Communications Act.

Prong 1 would also create new implicit subsidies contrary to the "direction from Congress in the 1996 Act that the Commission should make support explicit rather than implicit."²⁴ If an arbitrageur connects a conference bridge to a LEC's network to which the arbitrageur routes large volumes of traffic, the rural LEC, and ultimately its rural subscribers, would be required by prong 1 to subsidize voluminous arbitrage, even though that LEC is not involved in access stimulation. Prong 1 would require rural ratepayers to subsidize access stimulation services they never use.

The beneficiaries of the implicit subsidies under prong 1 would be the arbitrageurs, IXC's, and the substantial number of urban residents or employees of large corporations that use access stimulation services, such as "free" conference calling. The victims that would fund the implicit subsidies would be rural consumers. To a great extent, prong 1 would shift the costs of wasteful arbitrage from urban to rural residents. Given the higher populations in urban metropolitan areas, it is reasonable to presume that urban residents place far more calls to access stimulating services than rural residents. Therefore, prong 1 would require these implicit subsidies to be paid by those consumers least able to afford it, those living in small towns and rural areas.

Prong 1's flaws demonstrate that changing who pays for intercarrier compensation or altering the rates for exchange access service bear no relationship to the goal of eliminating wasteful arbitrage. Under the arbitrary and capricious standard, there must be a "rational connection between the facts found and the choice made." *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d at 758. Given that IXC's are not routing most arbitrage traffic over Aureon's CEA network, any connection between prong 1 (reversing the payment responsibility for CEA service from IXC's to LEC's) and the Commission's objective (to stop wasteful arbitrage) is fictitious. Furthermore, there is no rational basis for concluding that arbitrageurs like HD Tandem/Free Conferencing will engage in less arbitrage when prong 1 continues to fund arbitrage with payments from LEC's and does nothing to correct the false "free" price signal to users of access stimulating services.

²⁴ *Connect America Fund*, 26 FCC Rcd. at 17909 ¶ 747.

As if that were not enough, prong 1 is also arbitrary and capricious because, in multiple ways, it represents a radical and unreasonable departure from the standards and practices that have long governed compensation for CEA service and served the public interest. “Congress established a presumption...against changes in current policy that are not justified by the rulemaking record.” *Motor Vehicle Manufacturers Assoc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983). The Commission granted a Section 214 certificate to Aureon “to provide access services to interexchange carriers.”²⁵ The CEA network was constructed for the benefit of smaller IXC’s seeking to compete with AT&T and Northwestern Bell Telephone Company (now CenturyLink) in rural Iowa. “The [Iowa Network Access Division] INAD proposal is presented as a solution to the problem of how to achieve competition in long distance services in small rural communities.”²⁶ IXC’s have benefitted from the CEA network by avoiding the costs of constructing or leasing facilities in order to connect with hundreds of rural exchanges throughout Iowa. Charging LEC’s under prong 1 for CEA service that is provided to and for the benefit of IXC’s would be unreasonable and illogical.

The Commission should not adopt proposals that will have the effect of modifying Aureon’s Section 214 certificate. In granting the CEA Section 214 certificate, the Commission held that “[t]he goal of the [Iowa Network Access Division] INAD system is one this Commission considers an important priority – to speed the availability of high quality, varied competitive services to small towns and rural areas.”²⁷ That objective remains an important priority for our nation, and the Commission’s findings in granting 214 authorization for the CEA network remain valid. *Jicarilla Apache Nation v. U.S. Dept. of Interior*, 613 F.3d 1112, 1120 (D.C. Cir. 2010) (“Like a court, normally an agency must adhere to its precedents”). Moreover, a drastic modification to the CEA Section 214 certificate, such as requiring LEC’s (rather than IXC’s) to pay for CEA service, will not prevent HD Tandem/Free Conferencing from increasing arbitrage traffic.

Overruling the longstanding policies for CEA service would also be unreasonable given the serious reliance interests involved. “[A]n agency must also be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2126 (2016). In reliance on the Commission’s grant of Aureon’s Section 214 certificate, Aureon constructed a more than 2,700 mile fiber optic network to provide CEA service. For more than 30 years, smaller IXC’s have relied upon the CEA network to compete with AT&T in rural Iowa and the public has relied upon the modern telecommunications and information services made possible by CEA service. Mandating that LEC’s, rather than IXC’s, pay for CEA service under prong 1 would necessitate significant changes to the compensation arrangements for CEA service, which would render it financially infeasible for the CEA network to remain operational. In light of the serious reliance interests at stake, the Commission should not alter its longstanding compensation policies for CEA service, but should

²⁵ *Application of Iowa Network Access Division for Authority Pursuant to Section 214 of the Communications Act of 1934 and Section 63.01 of the Commission’s Rules and Regulations to Lease Transmission Facilities to Provide Access Service to Interexchange Carriers in the State of Iowa*, Memorandum Opinion, Order and Certificate, 3 FCC Rcd 1468 ¶ 1 (1988), *aff’d on recon.* 4 FCC Rcd 2201 (1989); *Nw. Bell Tel. Co. v. Iowa Utils. Bd.*, 477 N.W.2d 678, 681 (Iowa 1991).

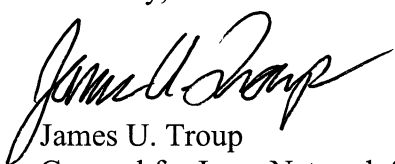
²⁶ *Id.* at 1468 ¶ 3.

²⁷ *Id.* at 1468 ¶ 4 and 1474 ¶ 38.

instead stop wasteful arbitrage by recovering from the users of access stimulating service the access costs they cause.

The development of an effective solution to wasteful arbitrage begins with addressing the problem that caused the Commission's prior efforts to fail. The root cause of the problem is that users of access stimulating services do not receive an accurate price signal reflecting access costs. The Commission should fix this root cause of the problem rather than upend decades of compensation policies for CEA service. *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d at 761 (holding that the FCC must consider less restrictive measures to achieve its stated objectives). Without adopting any new rules, wasteful arbitrage can be eliminated by confirmation and clarification from the Commission that IXC's and wireless carriers can pass access costs onto the cost causer -- the end user of the access stimulating service.

Sincerely,



James U. Troup
Counsel for Iowa Network Services, Inc. d/b/a
Aureon Network Services

May 23, 2019

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